

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 94-187

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

Sections NR 145.09 (5), (7) and (7m) all relate to situations when well construction, pump installation, or both, are commenced prior to obtaining the necessary permit. However, the three subsections set forth differing conditions and requirements which apply in each situation in what appears to be an inconsistent manner. For example, does the provision set forth in sub. (5), requiring assumption of strict liability and responsibility for maintaining full compliance with all provisions of ch. NR 812, apply also under the situations described in subs. (7) and (7m)? If so, why do subs. (7) and (7m) not mention “strict liability” as does sub. (5)? If not, what is the reason for the different requirement?

In addition, does the requirement that a “strict post-construction appraisal” be conducted by a county inspector of any well constructed or pump installed without prior county permit approval, set forth in sub. (5), also apply when well construction or pump installation proceeds without a permit under subs. (7) or (7m)? It seems incongruous to require an inspection when the county failed to act on a permit in a timely fashion but not when a constructor or installer was responsible for the failure to obtain a permit. Would this situation encourage people to construct wells or install pumps on weekends or holidays?

Further, removing the phrase “In emergency situations” from sub. (7) makes it possible for any person to proceed with construction or installation without a permit at any time, as long as prior notice is given. Although the rule states that arrangements for obtaining the permit shall be “addressed” when notice is given, a person may proceed with construction or installation regardless of whether arrangements are actually made. This provision effectively negates the

requirement to ever get a permit prior to construction or installation and, contrary to the statement in the analysis, it does not relate to “allowances for emergency well construction” because the rule no longer is limited to emergency situations.

The conceptual difficulty with this rule is that, while s. NR 145.09 (3) states that permit applications “shall be submitted to the administrator at least 2 working days prior to construction or installation,” the exceptions to this mandate contained in this subsection and in subs. (5), (7) and (7m) completely overwhelm the requirement that applications be submitted two working days prior to construction or installation. Given the exceptions, what point does the general requirement serve?

Finally, what happens if a permit application under subs. (5), (7) or (7m) is denied after the well construction or pump installation is completed?